

IN THE ELEVENTH JUDICIAL CIRCUIT, STATE OF MISSOURI
CIRCUIT JUDGE DIVISION

STATE OF MISSOURI, ex rel.)	
Attorney General Chris Koster,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
CANNON BUILDERS AND)	
REMODELERS, LLC,)	
)	Division:
Serve Registered Agent:)	
Robert Dean Cannon)	
630 Emerson Rd. 404)	
Saint Louis, MO 63141)	
)	
and)	
)	
ROBERT DEAN CANNON,)	
)	
Serve at:)	
630 Emerson Rd. 404)	
Saint Louis, MO 63141)	
)	
Defendants.)	

**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTIONS,
RESTITUTION, CIVIL PENALTIES, AND OTHER COURT ORDERS**

Plaintiff, State of Missouri, at the relation of Attorney General Chris Koster, brings this Petition for Preliminary and Permanent Injunctions, Restitution, Civil Penalties and Other Court Orders against Defendants, and, upon information and belief, states as follows:

Parties

1. Chris Koster is the duly elected, qualified and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to statutory authority of the office of the Attorney General, including but not limited to Chapter 407, RSMo (as amended), and regulations promulgated thereunder.¹

2. Defendant Cannon Builders and Remodelers, LLC is an active Missouri corporation registered with the Missouri Secretary of State. According to the Articles of Incorporation filed with the Missouri Secretary of State, its principal place of business is located at 1282 Jungermann Rd. Ste. C, Saint Peters, Missouri 63376.

3. Defendant Robert Dean Cannon is the organizer and registered agent of Defendant Cannon Builders and Remodelers, LLC. Defendant Robert Dean Cannon is a natural person who resides at 630 Emerson Rd. 404, Saint Louis, Missouri 63141. Defendant Robert Dean Cannon is being sued in his individual capacity.

4. Defendant Robert Dean Cannon is the sole organizer of Defendant Cannon Builders and Remodelers, LLC, and had direct control over the day-to-day operations of Defendant Cannon Builders and

¹All statutory references are to the Revised Statutes of Missouri (2012), as presently amended, unless otherwise indicated.

Remodelers, LLC. Defendant Robert Dean Cannon is individually liable for the violations of Chapter 407 alleged herein.

5. Defendants Cannon Builders and Remodelers, LLC and Robert Dean Cannon (collectively, “Defendants”) have done business within the State of Missouri by advertising, marketing, soliciting, and/or selling home repair, remodeling, and contracting services.

6. All references to Defendants include acts individually, in concert, or by or through principals, officers, directors, members, employees, agents, representatives, affiliates, assignees and successors of Defendants.

Jurisdiction

7. This Court has subject matter jurisdiction and personal jurisdiction over the Defendant under Art. V, § 14 Mo. Const.

8. This Court has authority over this action pursuant to § 407.100, which allows the Attorney General to seek injunctive relief, restitution, penalties, and other relief in circuit court against persons who violate § 407.020.

Venue

9. Venue is proper in this Court pursuant to § 407.100.7, which provides that “[a]ny action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of

business.”

10. Defendants advertised, marketed, solicited, or sold merchandise, including home repair and contracting services from their principal place of business located in St. Charles County, Missouri, and have engaged in the acts, practices, methods, uses, and conduct described below that violate § 407.020.

The Missouri Merchandising Practices Act

11. Section 407.020 of the Merchandising Practices Act provides in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice.... Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

12. “Person” is defined as “any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.” § 407.010(5).

13. “Merchandise” is defined as “any objects, wares, goods, commodities, intangibles, real estate, or services.” § 407.010(4).

14. “Sale” is defined as “any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit.” § 407.010(6).

15. “Trade” or “commerce” is defined as “the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms “trade” and “commerce” include any trade or commerce directly or indirectly affecting the people of this state.” § 407.010(7).

16. Defendants have advertised, marketed, and sold merchandise within the meaning of § 407.010.

17. Pursuant to authority granted in § 407.145, the Attorney General has promulgated rules explaining and defining terms utilized in §§ 407.010 to 407.145 of the Merchandising Practices Act. Said rules are contained in the Missouri Code of State Regulations (CSR). The rules relevant to Plaintiff’s Merchandising Practices Act allegations include, but are not limited to, the provisions of 15 CSR 60-3.010 to 15 CSR 60-14.040. These rules are adopted and incorporated by reference.

18. Specifically, 15 CSR 60-8.070 provides, in pertinent part:

(1) It is an unfair practice for any person in connection with

the sale of merchandise to unilaterally breach unambiguous provisions of consumer contracts.

Allegations of Fact Common to All Counts

19. Beginning in or about August 2012, Defendants advertised home repair, remodeling, and contracting services in the St. Charles and St. Louis areas.

20. Specifically, Defendants advertised their services by, among other methods, telemarketing and door-to-door solicitations to homeowners.

21. On at least eight (8) occasions, Defendants contracted with Missouri homeowners to perform roof or other home repairs in 2012 and 2013.

22. Defendants provided contracts for the work to be done to the homeowners, which included information about the type of repairs to be performed and indicated that the total price would be the price of the claim set by the homeowner's insurance company.

23. The contract also provided that neither party would be bound by the contract if the insurance company disallowed the claim.

24. Finally, the contract guaranteed that the homeowner would not be responsible for out-of-pocket expenses in excess of the homeowner's deductible plus the price of any "upgrades or add-ons."

25. After the homeowner's insurance company assessed the claim

and set a claim amount, Defendants took the initial payment from the homeowners' insurance companies as a down payment to begin work on the contracted services.

26. After collecting this down payment, the Defendants would perform only partial work, or would not return to perform work at all as agreed upon in the contracts.

27. On at least one occasion, Defendants hired subcontractors to provide building, construction, or roofing materials or supplies which were delivered to homeowners' residences and failed to pay those subcontractors.

28. Defendants accepted at least \$32,391.00 from at least eight (8) Missouri homeowners for whom Defendants failed to provide materials or services, or for whom Defendants provided only partial services.

Consumer Examples

I. Douglas Delaney

29. On or about October 11, 2012, Aaron Hewitt, a representative of Defendants, approached Mr. Delaney at his home, located at 1227 S. Victoria Ave., Columbia, Missouri 65201, and offered home repair services through Cannon Builders and Remodelers, LLC.

30. Mr. Delaney entered into a contract with Defendants in which Defendants promised to make repairs to his roof, gutters, siding, window screens and frames, and trim. The total cost of the repairs was listed as

\$16,396.37.

31. On or about October 17, 2012, Mr. Delaney gave Defendants a down payment of \$11,396.37, which he received as an initial payment from State Farm Insurance, to begin the work listed in the contract.

32. Several days later, Defendants completed the roof repairs described in the contract. The listed cost of those repairs was \$4,183.61.

33. To date, none of the other repairs described in the contract have been completed or even commenced, and Mr. Delaney has not been refunded the balance of his down payment, which totals \$7,212.76.

II. Sandhya Yanamadala

34. On or around January 25, 2013, Ryan Steffens, a representative of Defendants, approached Sandhya Yanamadala at her home located at 14751 Thornhill Terrace Dr., Chesterfield, Missouri 63017 and offered home repair services from Cannon Builders and Remodelers, LLC.

35. Ms. Yanamadala entered into a contract with Defendants in which Defendants promised to make repairs to a portion of her roof.

36. Ms. Yanamadala received a check from State Farm Insurance in the amount of \$4,290.61 which she endorsed to Defendants as a down payment for her roof repairs.

37. A few days later, Ms. Yanamadala received a phone call from Ryan Steffens in which he told Ms. Yanamadala that some of the Defendants'

employees were being transferred to Defendants' New Jersey location for work related to Hurricane Sandy.

38. On or about April 8, 2013, after Defendants failed to perform the promised roof repairs, Ms. Yanamadala requested a refund of her down payment.

39. Defendant Cannon promised to refund her down payment on several occasions, but has failed to do so and failed to perform any work on Ms. Yanamadala's roof to this date.

Count I-False Promises
(Against all Defendants)

40. Plaintiff incorporates all of the allegations contained in paragraphs 1 through 39.

41. Defendants engaged in methods, acts, uses and practices of false promises in connection with the sale of home repair, remodeling, and contracting services, in violation of § 407.020 RSMo., for reasons including, but not limited to, the following:

- a. Falsely promising to consumers that for an agreed-upon up-front payment, Defendants would provide home repair, remodeling, and contracting services, which was false or misleading as to his intention or ability to perform the promise, or likelihood the promise would be performed; and

- b. Falsely promising to consumers that Defendants would facilitate the delivery of materials and/or return to complete the promised services, which was false or misleading as to his intention or ability to perform the promise, or likelihood the promise would be performed.

Count II-Deception
(Against all Defendants)

42. Plaintiff incorporates all of the allegations contained in paragraphs 1 through 39.

43. Defendants engaged in methods, acts, uses and practices of deception in connection with the sale of home repair, remodeling, and contracting services, in violation of § 407.020 RSMo., for reasons including, but not limited to, the following:

- a. Using the method, act, use, practice, advertisement or solicitation to consumers that for an agreed-upon up-front payment, Defendants would provide home repair, remodeling, and contracting services, which had the tendency or capacity to mislead, deceive or cheat, or that tended to create a false impression; and
- b. Using the method, act, use, practice, advertisement or solicitation to consumers that Defendants would facilitate the

delivery of materials and/or return to complete the services, which had the tendency or capacity to mislead, deceive or cheat, or that tended to create a false impression.

Count III-Unfair Practices and Fraud
(Against all Defendants)

44. Plaintiff incorporates all of the allegations contained in paragraphs 1 through 39.

45. The contracts provided by Defendants to homeowners were consumer contracts. The unambiguous terms of the contracts stated that in exchange for a down payment, Defendants would provide home repair, remodeling, and contracting services.

46. Defendants engaged in unfair practices in violation of § 407.020 by unilaterally breaching unambiguous terms of consumer contracts, to wit: failing to perform work on homeowners' homes, despite receiving down payments, in violation of the consumers' contracts with Defendants.

Relief

WHEREFORE, Plaintiff prays this Court enter judgment:

A. Finding that Defendants have violated the provisions of § 407.020.

B. Issuing preliminary and permanent injunctions prohibiting and enjoining Defendants and their agents, servants, employees, representatives,

and other individuals acting at their direction or on their behalf from:

- i. Owning, managing, operating, performing, offering, advertising, soliciting, or selling any home repair, remodeling, and contracting services in the State of Missouri, except to the extent necessary to complete work already paid for by Missouri homeowners;
- ii. Expending or otherwise disposing of any funds that Defendants received from Missouri homeowners as initial, up-front, or down payments for work that has not yet been completed.

C. Requiring Defendant, pursuant to § 407.100.4, to provide full restitution to all consumers who suffered any ascertainable loss.

D. Requiring Defendants, pursuant to § 407.100.6, to pay to the State a civil penalty in such amounts as allowed by law per violation of Chapter 407 that the Court finds to have occurred.

E. Requiring Defendants pursuant to § 407.140.3, to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against Defendant, or such other amount as the Court deems fair and equitable.

F. Requiring Defendant, pursuant to § 407.130, to pay all court, investigative, and prosecution costs of this case.

G. Granting any additional relief that is just or proper.

Respectfully submitted,

Chris Koster
Attorney General

/s/Sarah J. Garber
Sarah J. Garber, #61966
Assistant Attorney General
P.O. Box 861;
St. Louis, MO 63188
(314) 340-6816;
Fax: (314) 340-7957
Sarah.garber@ago.mo.gov